MINIMIZE FINANCIAL SECTOR REGULATORY OVERLOAD

Accumulation of federal regulations over the past 30 years is estimated to cost the United States economy trillions of dollars annually, diverting resources from the financial industry and other regulated entities.[1] The Federal Government must adopt open data and regulatory technology (RegTech) solutions to harmonize onerous requirements and reduce compliance costs.
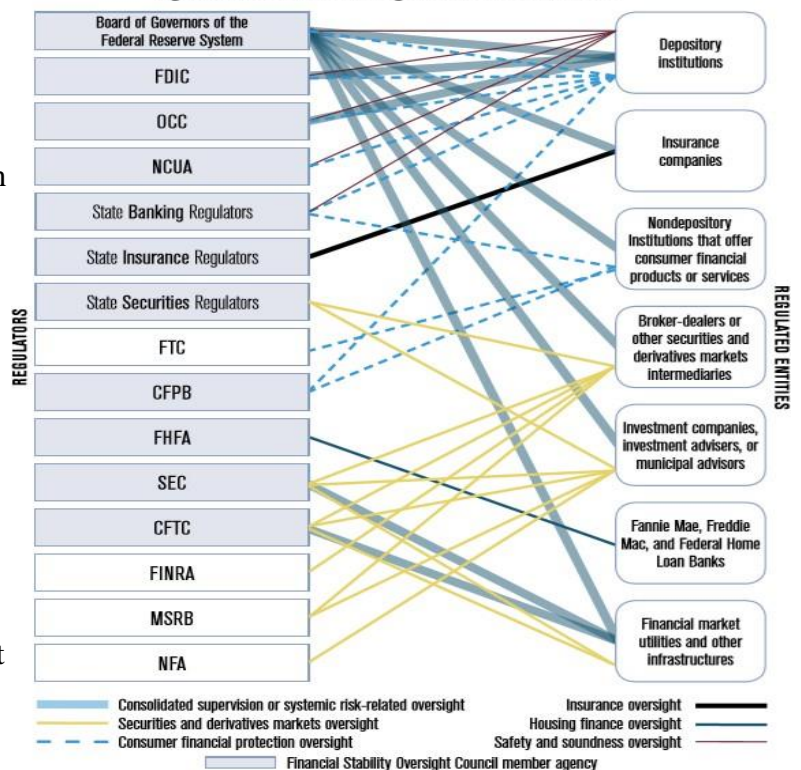
BACKGROUND

Federal regulations have accumulated over many decades, leading to "duplicative, obsolete, conflicting, and even contradictory rules."[2] Less than one percent of federal rules receive a regulatory cost-benefit analysis,[3, 4] which serves as "the primary analytical tool to inform specific regulatory decisions."[5] In 2014, the former Director of Regulatory Policy at the American Action Forum stated, "The most significant regulatory burdens do not arise merely because of a single rule. Rather, businesses and individuals must confront the cumulative effects of a variety of regulations issued by different agencies across separate administrations."[6]

The 2008 recession demonstrated that fragmentation across the U.S. financial regulatory apparatus threatens the growth, stability, and oversight of the economy.[7] Consequently, the Government Accountability Office (GAO) has issued systemic modernization recommendations on its annual *High-Risk List* report every year since 2009.[8] Currently, the financial services industry consists of "more than 13,000 banks and credit unions, payment companies, insurance companies, wealth and asset managers and financial market utilities that process transactions, payments and move money across domestic and international markets."[9] As Figure 1 shows, U.S. financial institutions must comply with multiple overlapping federal and state regulators.[10,11]

Modernizing the financial regulatory structure requires reforming federal information management practices through open data policies. Currently, most financial regulators "do not use data standards to organize the information they collect from regulated entities," and rely on antiquated, paper-based documentation and inconsistent reporting.[12]

Figure 1: U.S. Financial Regulatory Structure, 2016

In a 2017 report to the President, the Department of Treasury recommended congressional and executive action to reduce "critical" regulatory overlap and duplication in the financial sector. The Treasury Department's report

called on financial agencies to adopt a standardized data field known as a Legal Entity Identifier in order to identify the regulated entities that report to them.[13]

Modernizing the Federal Government's regulatory structure requires reforming federal information management practices through open data policies. The Data Foundation defines "open data" as "the idea that information should be both electronically-standardized and freely-available."[14] Open data generally features three main pillars: 1) Standardize data in open formats; 2) Publish or share the data to ensure it is accessible; and 3) Use – or leverage – the data to inform public and private decision-making.[15]

In 2013, the Office of Management and Budget (OMB) released a memo recognizing open data as "a valuable natural resource and a strategic asset to the U.S. Government, its partners, and the public…[which] strengthens our democracy and promotes efficiency and effectiveness in government, but also has the potential to create economic opportunity and improve citizens' quality of life."[16, 17] In 2018, the President's Management Agenda featured open data under cross-agency priority (CAP) goal #2, "Leveraging Data As a Strategic Asset."[18]

The U.S. Congress has continued efforts to modernize federal information management practices by enacting two major open data laws: The Digital Accountability and Transparency Act (DATA) of 2014,[19] and the Foundations for Evidence-Based Policymaking (or the "Evidence Act") Act of 2018.[20]

- The DATA Act, the first national open data law, requires Treasury and OMB to establish government-wide data standards of federal spending data. This data is published in a public database at *USAspending.gov.*
- The Evidence Act required federal agencies to publish and provide public access to government data assets in a machine-readable format to the public. The law also established the role of Chief Data Officers (CDO) across federal agencies to implement and oversee data governance requirements.

In December 2019, OMB issued the "Year-1 Action Plan" of the first government-wide Federal Data Strategy. The Federal Data Strategy seeks to incorporate the goals and requirements of the Evidence Act and the President's Management Agenda CAP #2.[21]

Australia's experience in leveraging open data to reform its regulatory compliance regime may be instructive to the United States. A 2006 report found that, "regulatory compliance [requirements] cost Australian business tens of millions of dollars," and diverted resources from core business activities.[22] In response, the Australian government established the Standard Business Reporting (SBR) system to ease regulatory compliance burdens.[23] SBR is administered on a voluntary basis and is considered by some to be the "gold standard" of regulatory modernization efforts.[24] Under the SBR system, multiple regulatory agencies operate under a streamlined reporting process with a similar taxonomy. To date, SBR has reduced the number of unique reporting terms across reporting forms "from almost 35,000 to less than 7,000 unique terms,"[25] saving regulated entities a projected $1 billion (in Australian dollars) in compliance costs from 2016 to 2017.[26] 97 percent of the $1 billion is estimated as savings to small businesses.[27, 28]

POLICY SOLUTIONS

To streamline reporting mandates and reduce compliance costs, Congress should consider policies supporting an open data framework like the Australian Standard Business Reporting model.[29]

Additionally, on September 24, 2019, Congress reintroduced the Financial Transparency Act with bipartisan lead sponsors.[30] If passed, the bill would likely become the first domestic U.S. RegTech law.[31,32] The Financial Transparency Act would, in part, encourage the modernization of financial regulatory filings in a similar manner to the DATA Act for federal spending data. The measure requires eight financial regulatory agencies to establish uniform data standards for regulatory reporting and to post the information online in a publicly accessible format.[33]

[1] Clyde W. Crews, *Ten Thousand Commandments,* Competitive Enterprise Institute*,* May 31, 2017, https://cei.org/sites/default/files/Ten%20Thousand%20Commandments%202017.pdf.

[2] Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, *The Cumulative Cost of Regulations* 8 (2016), Mercatus Center, https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf.

[3] Clyde W. Crews, *Less Than 1 Percent of Federal Regulations Get Cost-Benefit Analysis,* Competitive Enterprise Institute, Nov.15, 2015, https://cei.org/blog/less-1-percent-federal-regulations-get-cost-benefit-analysis.

[4] James Broughel, Richard Williams, *Government Report on Benefits and Costs of Federal Regulations Fails to Capture Full Impact of Rules* (2013), Mercatus Center, available at https://www.mercatus.org/publication/government-report-benefits-and-costs-federal-regulations-fails-capture-full-impact-rules.

[5] Office of Information and Regulatory Affairs, Office of Management and Budget, *2017 Draft Report to Congress on the Benefitsand Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* 8 (2017), https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf.

[6] Sam Batkins, *It's Past Time to Address Regulatory Duplication*, The Regulatory Rev. (May 19, 2014), https://www.theregreview.org/2014/05/19/19-batkins-regulatory-duplication/.

[7] U.S. Gov't Accountability Office, GAO-16-175, *Financial Regulation: Complex and Fragmented Structure Could Be Streamlined to Improve Effectiveness* (2016), https://www.gao.gov/assets/680/675400.pdf.

[8] U.S. Gov't Accountability Office, *High-Risk Series: Modernizing the U.S. Financial Regulatory System* (2019), https://www.gao.gov/highrisk/modernizing_financial_system/why_did_study.

[9] *Cybersecurity Regulation Harmonization Before the S. Homeland Sec. and Gov't. Aff. Comm.,* 115th Cong. (2017) (statement ofChris Feeney, President, BITS).

[10] U.S. Dept. of the Treasury, *A Financial System That Creates Economic Opportunities Banks and Credit Unions* (June 2017).

[11] In a 2018 hearing before the House Oversight & Government Reform Subcommittee on Intergovernmental Affairs, the President of BITS (the technology policy division of the Bank Policy Institute) testified that the financial services industry is "heavily regulated," with "nine independent Federal regulators, three self-regulatory organizations, and 50 State banking, securities, and insurance agencies." *Regulatory Divergence: Failure of the Administrative State Before the H. Oversight and Govt. Reform Comm., Subcomm. on Intergovernmental Affairs,* 115th Cong. (2018) (statement of Chris Feeney, President, BITS).

[12] *Issues: Financial Transparency Act,* The Data Coalition, available at https://www.datacoalition.org/issues/financial- transparency-act/ (last visited Aug. 2019) [hereinafter Data Coalition FTA].

[13] Treasury, *supra*, note 11.

[14] Data Foundation, *State of the Union of Open Data*, Third Edition (January 2019), https://www.datafoundation.org/the-state-of-the-union-of-open-data-ed-3.

[15] *Id.*

[16] The CIO Council, *Project Open Data—Managing Information as an Asset (last accessed* August 28, 2019), https://project-open-data.cio.gov/.

[17] U.S. Office of Management and Budget, *Memorandum M-13-13*, https://project-open-data.cio.gov/policy-memo/.

[18] *The President's Management Agenda*, U.S. Office of Management and Budget (Mar. 19, 2018), https://www.whitehouse.gov/wp-content/uploads/2018/04/ThePresidentsManagementAgenda.pdf.

[19] Pub. L. No. 113-101.

[20] Pub. L. No. 115-435.

[21] Federal Data Strategy, *What are the Principles?* (2018), https://strategy.data.gov/principles/.

[22] Taskforce on Reducing Regulatory Burdens on Business, Government of Australia, *Rethinking Regulation* (Jan. 2006), https://www.pc.gov.au/research/supporting/regulation-taskforce/report.

[23] *What is SBR?*, Standard Business Reporting: An Australian Government Initiative, http://www.sbr.gov.au/about-sbr/what-is-sbr(last visited Aug. 2019).

[24] Andrew Luckett, *Exploring RegTech: The Intersection of Regulation, Data, and Technology,* Apr. 5, 2019, available at https://www.datacoalition.org/exploring-regtech-the-intersection-of-regulation-data-and-technology/

[25] Hudson Hollister, Joseph Kull, Michael Middleton, and Michal Piechocki, *Standard Business Reporting: Open Data to Cut Compliance Costs* (Mar. 2017), Data Foundation and PWC, https://www.datafoundation.org/standard-business-reporting-2017.

[26] Jessica Yabsley, *Standard Business Reporting: Congress' Answer to Reducing Regulatory Compliance*, Data Coalition, Oct. 5,2018, https://www.datacoalition.org/standard-business-reporting-congress-answer-to-reducing-regulatory-compliance/.

[27] *The Benefits of a Deregulatory Agenda: Examples of Pioneering Governments Before the H. Oversight and Govt. Reform Comm., Subc. on Intergovernmental Affairs,* 115th Cong. (2018) (statement of Matt Vickers, Product Sales Manager, New Markets,Xero).

[28] Yabsley, *supra*, note 27.

[29] Hollister, *supra*, note 26.

[30] H.R. 4476 in the 116th Congress; H.R. 1530 in the 115th Congress

[31] Data Coalition FTA, *supra,* note 13.

[32] Datatracks United States, Financial Transparency Act, https://www.datatracks.com/us/fta/ (Accessed 2019)

[33] The eight federal agencies are the Securities and Exchange Commission (SEC), CFTC, the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency, and the National Credit Union Administration.